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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,005

12/02/2003

Baruch Segal

3116/1

3160

7590 08/19/2008  
DR. MARK FRIEDMAN LTD.  
C/o Bill Polkinghorn  
Discovery Dispatch  
9003 Florin Way  
Upper Marlboro, MD 20772

EXAMINER

STULII, VERA

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

08/19/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/725,005	<b>Applicant(s)</b> SEGAL ET AL.	
	<b>Examiner</b> VERA STULII	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Invention I (claims 1-9 and 18-23) in the reply filed on May 12, 2008 is acknowledged. Applicant had not provided any reasons/ground(s) for traversal. Therefore, the traversal is not found persuasive.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 18, 19-20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (US 2003/0219513).**

In regard to claims 1 and 18, Gordon discloses a system that is capable of reducing human body weight, comprising an assemblage of plurality of foods placed in a carton which can be called a "portable kit", wherein said plurality of foods have at least one predetermined nutritional component which can be carbohydrate content, with said foods organized/oriented in stacked levels. Claim 1 further recites that each level includes foods of substantially similar carbohydrate content, and wherein said substantially similar carbohydrate content varies from level to level. Once it was known to provide a plurality of foods with a predetermined nutritional content, where nutritional content are the same or varied, from one food to another, such as calories or carbohydrates, how one chooses to stack them in terms of their nutritional content is

seen to have been an obvious matter of choice; especially, since the nutritional content of the foods would have been known.

In regard to claim 19, Gordon discloses that foods are contained in a separate container (food packaged in a package) ([0028], [0106]).

In regard to claim 20, Gordon discloses separate compartments in a one-piece enclosure (Fig. 5b).

In regard to the shape limitation in claims 18 and 23, it is noted that the configuration (shape) of the claimed kit would have been a matter of choice for the person of ordinary skill in the art, absent persuasive evidence that the particular configuration of the claimed kit is significant (See MPEP 2144.04 (IV)). Also, rearranging/shifting foods in the kit would not have modified the operation of the claimed kit. Further in this regard, it is noted that the particular shape of the kit, and arrangement of the foods in the kit, would have been a matter of personal choice and design.

**Claims 1-9 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (US 2003/0219513) in view of Riling et al (US 5,582,028).**

In regard to claims 1, Gordon discloses a system that is capable of reducing human body weight, comprising an assemblage of plurality of foods placed in a carton which can be called a "portable kit", wherein said plurality of foods have at least one predetermined nutritional component which can be carbohydrate content, with said foods organized/oriented in stacked levels. Claim 1 further recites that each level

includes foods of substantially similar carbohydrate content, and wherein said substantially similar carbohydrate content varies from level to level. Once it was known to provide a plurality of foods with a predetermined nutritional content, where nutritional content are the same or varied, from one food to another, such as calories or carbohydrates, how one chooses to stack them in terms of their nutritional content is seen to have been an obvious matter of choice; especially since the nutritional content of the foods would have been known.

Claim 1 also recites the spoiling prevention means (see also claims 5, 6, 21 and 22). As disclosed, these spoiling prevention means is a cooling pack. Gordon discloses that any type of conventional storage expedient can be used with his food packs ([0071]). As evidenced by Riling et al, it is conventional in the art to employ a cooling pack to prevent spoilage. To modify Gordon and employ a cooling pack to prevent spoilage would have been an obvious result effective variable and an obvious function of the type of food and the preserving time desired. Therefore, it would have been obvious to modify the teachings of Gordon and use cooling packs in a portable kit/device/ apparatus, if necessary, in order to preserve the freshness of foods. The particular arrangement and color coding of the cooling packs would have been a matter of personal choice.

In regard to claim 2, Gordon discloses that foods are contained in separate containers (food packaged in a package) ([0028], [0106]).

In regard to the shape/configuration limitation in claims 3 and 4, it is noted that the configuration (shape) of the claimed kit is a matter of choice which the person of

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ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed kit is significant (See MPEP 2144.04 (IV)). Also, rearranging/shifting foods in the kit would not have modified the operation of the claimed kit. Further in this regard, it is noted that the particular shape of the kit, and arrangement of the foods in the kit, would have been a matter of personal choice and design preference.

In regard to the color-coding limitation in claims 7-9, Gordon discloses that each of the package is marked in a specific manner that identifies it with an assembly which comprises similarly marked packages [0040]. The particular colors used for making is seen to have been a matter of personal.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

VS